

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

<p>WALTER A. MARTINEZ, vs. MICHAELA D. ANDRUZZI, et al.,</p> <p style="text-align: center;">Plaintiff, Defendants.</p>	<p>REPORT AND RECOMMENDATION Case Number: 2:06CV01023 Honorable Tena Campbell Magistrate Judge Brooke C. Wells</p>
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Pursuant to [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) Chief Judge Tena Campbell referred this case for consideration. Before the court is Defendants' first motion to dismiss that was filed on December 16, 2008.¹ After Plaintiff Walter Martinez failed to file any opposition to Defendants' motion, the court entered an Order to Show Cause on January 22, 2009.² In this order Plaintiff was directed to show cause why Defendants' motion to dismiss should not be granted pursuant to the local rules because Plaintiff failed to oppose the motion. Specifically, Plaintiff was warned that “[f]ailure to respond will result in this court recommending that Defendants' motion be granted.”³ Plaintiff has failed to respond to the court's order to show cause. The court, therefore, recommends that Defendants' motion be granted.

Local rule 7-1(b)(4)(A) provides in relevant part, “A memorandum opposing (i) motions to dismiss, . . . must be filed within thirty (30) days after service of the motion or within such

¹ Docket no. 16.

² Docket no. 19.

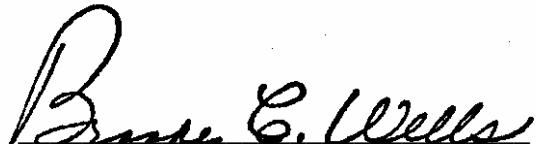
³ Order to Show Cause p. 2.

time as allowed by the court.”⁴ The local rules go on to provide that “Failure to respond timely to a motion may result in the court’s granting the motion without further notice.”⁵

Here, Plaintiff has not only failed to oppose Defendants’ motion, but has also failed to respond to this court’s order to show cause. The court specifically warned Plaintiff that a failure to respond to the court’s order to show cause would result in this court recommending that Defendant’s motion be granted.⁶ Therefore, the court recommends that Defendants’ motion to dismiss be granted. In the alternative, based upon these same failures by Plaintiff, the court recommends that this case be dismissed without prejudice.⁷

Copies of the foregoing report and recommendation are being mailed to all parties who are hereby notified of their right to object. The parties must file any objection to the Report and Recommendation within ten days after receiving it. Failure to object may constitute a waiver of objections upon subsequent review.

DATED: February 3, 2009



Brooke C. Wells
United States Magistrate Judge

⁴ DUCivR 7-1(b)(4)(A) (2008).

⁵ DUCivR 7-1(d).

⁶ See Order to Show Cause p. 2.

⁷ See *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1162 (10th Cir. 2007) (stating that when dismissing a case without prejudice “a district court may, without abusing its discretion, enter such an order without attention to any particular procedures”); *Reed v. Bennett*, 312 F.3d 1190, 1195 (10th Cir. 2002) (“A district court undoubtedly has discretion to sanction a party for failing to prosecute or defend a case, or for failing to comply with local or federal procedural rules.”).